

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

UNITED STATES OF AMERICA)
)
 v.) CRIMINAL ACTION NO.
) 2:06cr108-MHT
GARRETT ALBERT DYKES)

ORDER

The court having reviewed the Presentence Investigation Report (PSR) and defendant Garrett Albert Dykes's third objection, it is ORDERED that the parties provide supplemental briefing on the following issues:

(1) whether the two-point enhancement recommended in the PSR is warranted under the 'relevant conduct' provision of U.S.S.G. § 1B1.3(a)(1), notwithstanding the fact that the defendant's other conduct took place five days prior to the offense of conviction;

(2) whether the two-point enhancement recommended in the PSR is warranted under the 'relevant conduct'

provision of U.S.S.G. § 1B1.3(a)(2), notwithstanding the fact that the offense of conviction appears not to be "of a character for which § 3D1.2(d) would require grouping of multiple counts ... ;"

(3) whether the two-point enhancement recommended in the PSR is warranted under the 'multiple counts' provisions of U.S.S.G. §§ 2G2.1(d) and 3D1.2(d), notwithstanding the fact that the defendant's other conduct was not alleged in the federal information against him, stipulated to in his plea agreement, admitted in his plea colloquy, or found by a jury beyond a reasonable doubt; and

(4) if the court were to find that a two-point enhancement is warranted under the Sentencing Guidelines, whether the court would be required to hold an evidentiary hearing in order to making findings of fact by a preponderance of the evidence as to the defendant's relevant conduct.

It is further ORDERED that the parties submit briefing on the foregoing issues to the court on or before September 21, 2006.

DONE, this the 12th day of September, 2006.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE